

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

NOTE-00 INR-07 NSAE-00 FAA-00 PM-03 H-02 L-02 NSC-05

PA-01 PRS-01 SP-02 SS-15 NSCE-00 SSO-00 USIE-00

INRE-00 /060 W

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O 121113Z MAY 75

FM AMEMBASSY LONDON

TO SECSTATE WASHDC IMMEDIATE 1025

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E.O. 11652: N/A

TAGS: EAIR, UK

SUBJ: CIVAIR - PANAM AGENTS COMMISSION

REF: LONDON 7109

1. DEPUTY ASSISTANT SECRETARY WALDMANN AND EMBOFF MET WITH DEPARTMENT OF TRADE OFFICIALS (ROGERS AND PAYNE) MAY 10 TO DISCUSS PASSENGER SALES AGENT COMMISSION CONTROVERSY AND BRITISH THREAT TO CUT-OFF PANAM SERVICES TO UK. TALKS WERE USEFUL IN SENSE OF CLARIFYING BASIS FOR POSITION EACH GOVERNMENT HAS TAKEN IN CONTROVERSY BUT THEY WERE NOT SUCCESSFUL IN ALTERING BASIC POSITIONS.

2. AS WE HAVE EXPLAINED BEFORE, BRITISH CONTEND AGENT COMMISSIONS CONSTITUTE ONE OF THE ELEMENTS WHICH MAKE UP THE PASSENGER FARES NEGOTIATED BY IATA AIRLINES AND APPROVED BY GOVERNMENTS. PANAM, BY DENOUNCING IATA COMMISSION RESOLUTION, CREATED AN OPEN RATE SITUATION WHICH, ACCORDING TO BRITISH AGREEMENT, WAS CLOSED AGAIN BY NEW 7.5 COMMISSION FILING WITH CAA BY BRITISH AIRWAYS ON BEHALF OF ALL IATA AIRLINES EXCEPT PANAM. BECAUSE PANAM HAS NOT FILED NEW TARIFF BUT HAS SAID IT WILL PAY DIFFERENT COMMISSION RATE IT IS ALLEGED TO BE VIOLATING TERMS OF ITS LIMITED OFFICIAL USE

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TARIFF. THE BRITISH ALSO BELIEVE THAT, BY "VARYING" PANAM'

PERMITS IN SUCH A WAY AS TO LINK COMMISSIONS NOT TO SALES BUT RATHER TO TRAFFIC CARRIED TO AND FROM THE UK, THEY HAVE DEVISED A BASIS TO HOLD CARRIER RESPONSIBLE IN UK FOR COMMISSIONS PAID IN THE U.S. AND THIRD COUNTRIES.

3. THE BRITISH SEEM PREPARED TO CONCEDE THAT IT IS AT LEAST ARGUABLE WHETHER AGENT COMMISSIONS ARE COVERED BY US/UK AVIATION AGREEMENT. HOWEVER, THEY SEEM TO THINK THEY HAVE THE SUPPORT OF MOST EUROPEAN GOVERNMENTS FOR THEIR INTERPRETATION AND THEY APPEAR PREPARED TO EXERT AS MUCH PRESSURE ON PANAM AS IS NECESSARY TO ACHIEVE DESIRED RESULT OF FORCING IT INTO LINE WITH OTHER IATA CARRIERS.

4. BRITISH HAVE DISCOVERED A CAB ORDER ISSUED AGAINST PANAM ON JULY 15, 1958 (DOCKET NO. 8875) DIRECTING CARRIER TO CEASE AND DESIST FROM PAYING EXCESSIVE COMMISSION. BRITISH DO NOT KNOW CIRCUMSTANCES SURROUNDING ISSUANCE OF 1958 ORDER BUT THEY ASSUME THAT IT IS EVIDENCE THAT USG HAS ACCEPTED VIEW THAT COMMISSIONS FORM PART OF THE RATE STRUCTURE. (COMMENT: IF 1958 CAB ORDER WAS ISSUED UNDER CIRCUMSTANCES SIMILAR TO PRESENT, WE BELIEVE USG SHOULD CONSIDER FOLLOWING SAME LINE OF ACTION NOW AS TEMPORARY SOLUTION UNTIL GOVERNMENTS CAN NEGOTIATE OUT CURRENT DIFFERENCES. IF, AS IS MORE LIKELY, 1958 SITUATION WAS DIFFERENT, WE WILL NEED INFORMATION TO ARGUE THAT 1958 NOT A PRECEDENT FOR PRESENT PROBLEM.)

5. REGARDING PANAM'S SITUATION, THERE CAN BE LITTLE DOUBT THAT MANNER IN WHICH CARRIER HAS PROCEEDED HAS EXACERBATED SITUATION. FACT PANAM ANNOUNCED ON APRIL 9 (OR THEREABOUT THAT IT DENOUNCING IATA COMMISSION RESOLUTION WITH EFFECT FROM APRIL 1 IS CITED AS EVIDENCE OF BAD FAITH BY CARRIER BECAUSE IT NOT IN KEEPING WITH NORMAL IATA PROCEDURES.

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TO SECSTATE WASHDC IMMEDIATE 1026

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BRITISH ALSO VERY UPSET BY "ARROGANT AND DEFIANT TONE" OF PANAM LETTER OF MAY 8 TO UKG. AS DEPARTMENT APPRECIATES, THERE ARE NUMBER OF LEGAL PECULIARITIES IN CURRENT SITUATION. PERHAPS NONE STRANGER, HOWEVER, THAN CARRIER'S CURIOUS VULNERABILITY AT PRESENT. HAVING NOW AGREED TO COMPLY WITH UKG DIRECTIVE ON COMMISSION LEVELS IN UK, CARRIER IS THREATENED WITH REVOKATION OF ITS UK PERMITS UNLESS IT GIVES UKG AN ASSURANCE THAT IT WILL COMPLY WITH THAT DIRECTIVE IN US AND THIRD COUNTRIES. IN OTHER WORDS, PANAM WOULD BE PUNISHED (PERMITS REVOKED) NOT FOR COMMITTING A "CRIME" (HIGHER COMMISSION PAYMENTS) BUT FOR REFUSING TO PROMISE NOT TO COMMIT THAT "CRIME".

6. COMMENT: SINCE BRITISH THREATEN ACTION UNLESS PANAM EXPLICITLY ACCEPTS CONDITIONS CONTAINED IN "VARIATION" OF ITS PERMIT AND SINCE USG DOES NOT AGREE THAT BRITISH HAVE AUTHORITY TO IMPOSE THOSE CONDITIONS, WE BELIEVE USG SHOULD DIRECT PANAM NOT TO OFFER ANY FURTHER ASSURANCES TO UKG REGARDING COMMISSION LEVELS PAID OUTSIDE THE UK UNTIL GOVERNMENTS HAVE WORKED OUT DIFFERENCES OF VIEW. AT SAME TIME, WE BELIEVE WE SHOULD BE INSTRUCTED TO DELIVER A NOTE PROTESTING "VARIATION" OF PANAM PERMIT AND WARNING BRITISH THAT ACTION AGAINST PANAM BASED ON COM-
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MISSIONS PAID OUTSIDE UK COULD HAVE SERIOUS CONSEQUENCES. ALSO, BECAUSE BRITISH CASE SEEMS TO HAVE SO MANY LEGAL SHORTCOMINGS, WE BELIEVE PANAM SHOULD BE ENCOURAGED TO PURSUE ITS CASE IN BRITISH COURTS TO TRY TO GET DECLARATORY JUDGEMENT AGAINST UKG. FINALLY, WOULD BE USEFUL FOR US TO KNOW WHEN USG WOULD BE IN A POSITION TO CONSULT WITH BRITISH ON DIFFERREING VIEWS OVER WHETHER AGENT COMMISSION ARE OR SHOULD BE COVERED BY BILATERAL AVIATION AGREEMENT.

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